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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 STELLA MAUDINE NICKELL,

14 Defendant.

CASE NO. CR87-0276JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is *pro se* Defendant Stella Maudine Nickell's motion for
17 compassionate release pursuant to 18 U.S.C. § 3582(c)(1) and § 4205(g). (Mot. (Dkt.
18 # 2).) Plaintiff the United States of America ("the Government") opposes Ms. Nickell's
19 motion. (Resp. (Dkt. # 4).) The court has considered Ms. Nickell's motion, the parties'
20 submissions in support of and in opposition to the motion, the relevant portions of the
21 record, and the applicable law. Being fully advised, the court DENIES Ms. Nickell's
22 motion.

II. BACKGROUND

Ms. Nickell is a 78-year-old inmate who is currently detained at Federal Correctional Institution-Dublin (“FCI-Dublin”). (*See* Mot. at 18.¹) In 1986, Ms. Nickell implanted potassium cyanide in packages of over-the-counter pain medications. *United States v. Nickell*, 883 F.2d 824, 825 (9th Cir. 1989). Her product tampering resulted in two deaths—her husband, Bruce Nickell, and Sue Snow. *Id.* A jury found Ms. Nickell guilty of five counts of product tampering in violation of 18 U.S.C. § 1365. *Id.* at 825. On June 17, 1988, the court sentenced Ms. Nickell to 90 years of imprisonment. (*See* Resp., Ex. C (“Judgment”).) As of the date of this order, Ms. Nickell has served 34 years of her 90-year sentence. (*See* Mot. at 2.) Although she became eligible for parole in 2017, after serving her 30-year minimum term of imprisonment, the Parole Commission has twice denied her requests for parole. (*See* Judgment; Mot. at 15-16; Resp., Ex. B (“Parole Commission Letter”) (Dkt. # 6).) Ms. Nickell’s projected release date is July 10, 2040. (*See* Mot. at 16 (stating that this is Ms. Nickell’s statutory, mandatory release date).)

Ms. Nickell now brings a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) and § 4205(g), asking the court to reduce her sentence to time served. (*See generally* Mot. at 1.) She argues that release is warranted because of, among other things, her age, her “aging-related chronic medical conditions,” her good behavior in prison, and the fact that she has served more than 30 years (the minimum term) of her

¹ Unless otherwise indicated, the court uses the CM/ECF page numbers when citing to the parties’ pleadings and exhibits.

1 90-year sentence. (*See id.* at 1-2, 5-6, 9-13.) The Government argues that Ms. Nickell’s
 2 motion should be denied because: (1) § 3582(c)(1)(A) does not apply to Ms. Nickell
 3 because she committed her offenses before November 1987; and (2) § 4205(g) does not
 4 afford Ms. Nickell any relief because the Bureau of Prisons (“BOP”) has not filed a
 5 motion for a reduction in Ms. Nickell’s minimum term of imprisonment on her behalf
 6 and such a motion would not provide her with any relief. (*See Resp.* at 4-6.)

7 III. ANALYSIS

8 A court generally may not correct or modify a prison sentence once it has been
 9 imposed, unless permitted by statute or by Federal Rule of Criminal Procedure 35.
 10 *United States v. Penna*, 315 F.3d 509, 511 (9th Cir. 2003); *see also Dillon v. United*
 11 *States*, 506 U.S. 817, 824-25 (2010). 18 U.S.C. § 3582(c)(1), as amended by the First
 12 Step Act of 2018 (“FSA”), “allows certain inmates to seek a form of sentence
 13 modification,” commonly referred to as compassionate release,² “by filing motions to that
 14 effect with the district court.” *United States v. King*, 24 F.4th 1226, 1228 (9th Cir. 2022)
 15 (first citing 18 U.S.C. § 3582(c)(1); and then citing First Step Act of 2018, Pub. L. No.
 16 115-391, § 603(b)(1), 132 Stat. 5194, 5239 (2018) (adding “upon motion of the
 17 defendant” to the statutory text)); *see also United States v. Aruda*, 993 F.3d 797, 799-802
 18 (9th Cir. 2021) (permitting courts to reduce a defendant’s sentence under § 3582(c)(1)(A)

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² “Although relief under § 3582(c) is commonly referred to as ‘compassionate release,’ such relief is not limited to immediate release, but includes a reduction in sentence.” *United States v. Millard*, No. CR-15-01391-PHX-DGC, 2022 WL 279596, at *2 n.1 (D. Ariz. Jan. 31, 2022) (quoting *United States v. Marks*, No. 03-cr-06033-L, 2020 WL 1908911, at *3 n.3 (W.D.N.Y. Apr. 20, 2020)).

1 if the defendant establishes “extraordinary and compelling” reasons for a reduction in
2 sentence and meets other statutory requirements). However, not all prisoners are
3 permitted to personally file such motions for compassionate release under the express
4 terms of § 3582(c)(1).

5 § 3582(c)(1) was enacted as part of the Sentencing Reform Act of 1984 (“SRA”),
6 which was expressly intended to apply “only to offenses committed after the taking effect
7 of this chapter.” *See* Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 227, 98 Stat.
8 1837, 1998 (1984); Sentencing Act of 1987, Pub. L. No. 100-182 § 2(a), 101 Stat. 1266
9 (1987) (inserting “shall apply only to offenses committed after the taking effect of this
10 chapter” into the text of § 3582(c)(1))). Thus, § 3582(c)(1) “only applies to prisoners
11 who offended on or after November 1, 1987.” *King*, 24 F.4th at 1128-29; *see also*
12 Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217 § 4, 99 Stat. 1728
13 (1985) (setting the effective date for the SRA). Because Ms. Nickell committed her
14 offenses in 1986 (*see* Resp., Ex. A (“PSR”) (Dkt. # 6) at 3-6), before the SRA took effect,
15 § 3582(c)(1) does not apply to her.

16 Rather, § 4205(g), although repealed in 1987 by the SRA, applies to Ms. Nickell.
17 *See King*, 24 F.4th at 1129 (stating that “inmates who committed crimes on or before
18 October 31, 1987, remain subject to § 4205(g) and cannot themselves file a motion for
19 compassionate release”); 28 CFR § 572.40 (2022) (“18 U.S.C. 4205(g) was repealed
20 effective November 1, 1987, but remains the controlling law for inmates whose offenses
21 occurred prior to that date.”). Under the statute, a prisoner is not allowed to directly
22 request a reduction in sentence by filing a motion in district court; only the BOP can file

1 a motion seeking such relief on behalf of the inmate.³ *See King*, 24 F.4th at 1129; 18
 2 U.S.C. § 4205(g). Moreover, that provision does not authorize a court to order the
 3 immediate release of a defendant. *See* 18 U.S.C. § 4205(g). Instead, it authorizes a
 4 district court to make a prisoner who is serving a minimum term sentence⁴ and is not yet
 5 eligible for parole immediately eligible on a motion by the BOP. *Id.* (“At any time upon
 6 motion of the Bureau of Prisons, the court may reduce any minimum term to the time the
 7 defendant has served.”); *see* 28 CFR § 571.60 (2022).

8 Ms. Nickell’s motion for compassionate release pursuant to § 4205(g) is improper
 9 for two reasons. First, Ms. Nickell cannot personally move the court for a reduction in
 10 sentence under § 4205(g), and the BOP declined to file such a motion on her behalf.⁵ *See*
 11 *King*, 24 F.4th at 1229 (stating that only the BOP can file a motion requesting relief under
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13 ³ Before 2018, “only the BOP Director could file a § 3582(c)(1)(A) motion for a sentence
 14 reduction.” *Aruda*, 993 F.3d at 799. The FSA amended § 3582(c)(1)(A) to also allow a
 15 defendant to seek a reduction directly from the court. *United States v. Keller*, 2 F.4th 1278, 1281
 (9th Cir. 2021). The First Step Act did not, however, make a corresponding amendment to
 § 4205(g).

16 ⁴ With respect to the phrase “minimum term,” § 4205(b) provides that a sentencing court
 17 imposing a sentence of imprisonment exceeding one year may “designate in the sentence of
 18 imprisonment imposed a minimum term at the expiration of which the prisoner shall become
 19 eligible for parole, which term may be less than but shall not be more than one-third of the
 maximum sentence imposed by the court” or may instead impose a maximum term and specify
 “that the prisoner may be released on parole at such time as the Commission may determine.” 18
 U.S.C. § 4205(b).

20 ⁵ To the extent Ms. Nickell asks the court to review the BOP’s decision not to file a
 21 motion for compassionate release on her behalf (*see generally* Mot. at 2 (claiming that the BOP’s
 22 June 2021 denial of her request for compassionate release was incorrect because it stated that her
 offense was “non-paroleable”)), the court is unable to do so. *Simmons v. Christensen*, 894 F.2d
 104, 1043 (9th Cir. 1990) (stating that a court may not review “the Bureau of Prisons decisions
 whether to move a sentencing court for a reduction of a minimum term to time served under 18
 U.S.C. § 4205(g)”).

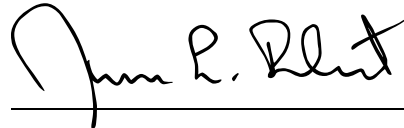
§ 4205(g)); (*see also* Dkt.; Mot. at 14-15 (containing the BOP Assistant Director/General Counsel denial of Ms. Nickell’s request the BOP to initiate a motion for reduction in sentence on her behalf)). Accordingly, the court lacks the authority under § 4205(g) to entertain Ms. Nickell’s motion for compassionate release. *See King*, 24 F.4th at 1229. Second, even if § 4205(g) authorized the court to consider Ms. Nickell’s motion, the court would be unable to grant her requested relief—i.e., her immediate release (*see* Mot. at 1-2, 5-6, 9-12)—because § 4205(g) only authorizes the court to make the defendant immediately eligible for parole by “reduc[ing] any minimum term to the time the defendant has served.” *See* 18 U.S.C. § 4205(g); 28 CFR § 571.60. The court also notes that, because Ms. Nickell has already served the minimum term—30 years—imposed by the court and is thus already eligible for parole (*see* Judgment; Mot. at 15), a motion by the BOP to reduce her minimum term to time served pursuant to § 4205(g) would not provide her with any relief.

In sum, the court DENIES Ms. Nickell’s motion for compassionate release because her motion is improper under both 18 U.S.C. § 3582(c)(1)(A) and § 4205(g). In her motion, Ms. Nickell also asks the court to appoint counsel to represent her with respect to the instant motion. (*See* Mot. at 8.) Because the court has denied Ms. Nickell’s motion, the court also DENIES her request for appointment of counsel as moot.

IV. CONCLUSION

For the foregoing reasons, the court DENIES Ms. Nickell’s motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1) and § 4205(g) (Dkt. # 2) and DENIES Ms. Nickell’s request for appointment of counsel (Dkt. # 2).

1 Dated this 2nd day of June, 2022.

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4 JAMES L. ROBART
5 United States District Judge
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